

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6520 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DARBAR BHIKHUBHA HANUBHA CHUDASAMA

Versus

DISTRICT MAGISTRATE

Appearance:

MR SATISH R PATEL for Petitioner

MR KC SHAH, A.G.P., for Respondents

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 18/09/96

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner - detenu - Darbar Bhikhubha Hanubha Chudasama has brought under challenge the detention order dated 17th January 1996 rendered by the respondent No.1 u/s.3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No.16 of 1985), hereinafter referred to as "the PASA Act."

It is submitted and it is also not in dispute that the detention order has been served on 26th March, 1996.

2. The grounds on which the impugned order of detention has been passed appear at Annexure : C to the petition. They inter-alia indicate that the petitioner has been keeping with him deadly weapons like knife (Chhari), extorting money from the innocent people and assaulting them with deadly weapons and thereby creating atmosphere of fear amongst them. Following offences have been registered in Junagadh City Police Station and Junagadh Taluka Police Station :

JUNAGADH CITY POLICE STATION :

1. CR I - 265/92 U/ss. 307 I.P.C. read with Section 135 of the Bombay Police Act. Pending trial.
2. CR I - 287/95 U/ss. 326 I.P.C. r/w Sec. 135 of the Bombay Police Act. Pending trial.
3. CR I - 394/95 U/ss. 324, 504, 114 I.P.C. r/w dtd. 2.9.95 Sec. 135 of the Bombay Police Act. Pending trial.

JUNAGADH TALUKA POLICE STATION :

1. CR I - 215/93 U/ss. 324, 323, 504, 506(2) I.P.C. r/w. Sec. 135 of the Bombay Police Act. Pending trial.
2. CR I - 154/94 U/ss. 364, 365, 34 I.P.C. r/w Sec. 25(1)(A) of the Arms Act and Section 135 of the Bombay Police Act. Pending trial.

It is not in dispute that out of the aforesaid offences of the year 1995, the last one is dated 2nd September, 1995. The petitioner was released on bail in that respect. It is also not in dispute that the petitioner has been on bail in respect of other offences.

3. It has been recited that the detenu's anti-social activity tends to obstruct the maintenance of public order and in support of the said conclusion statements of witnesses dated 23.11.1995 and 12.1.1996 have been relied

upon. They indicate about the incidents occurred in the month of August, September, October and December, 1995. With regard to the incidents it has been generally alleged that the petitioner has been a head strong person and has been indulging in beating of the witnesses, extorting money from them, indulging in abducting the persons and beating them and thereby creating atmosphere of fear amongst the witnesses.

4. I have heard the learned Advocate for the petitioner and learned A.G.P. for the State. The petitioner has challenged the aforesaid order of detention on number of grounds, inter alia, on the ground of delay as can be seen from Para : 16 at page : 9 of the petition, which reads as under :

" The petitioner says and submits that last offence registered C.R.No. 394 of 1995 on 2.9.1995, petitioner was released on bail on 5.9.1995 and statements are recorded on 23.11.1995 and order of detention has been passed on 17.1.1996, therefore, order of detention passed after five months of the last registered offence. Thus, it is great delay in passing of the order of detention and served on 26.3.1996, it is also delay. Thus, the petitioner's continued detention has become illegal."

5. Although there is no Affidavit in Reply to the aforesaid ground of delay, it has been submitted by Mr. K.C. Shah, learned A.G.P. that if the dates of the incidents narrated by the witnesses have been taken into consideration, it cannot be said that there is delay in passing the impugned order of detention. In reply it has been submitted that though two of the witnesses have given their statements in January, 1996, they have referred to the incident of 5 to 6 months before the date of the statements. Hence even in that respect there is delay. Even otherwise there is delay between the last registered case and the impugned order of detention. Mr. Patel has referred to a decision of this Court rendered on 15.10.1993 (Coram : S.M.Soni and S.D.Shah, JJ., Per : Soni, J.) in Special Criminal Application No. 1060 of 1993, where also the time gap between the last of the incidents narrated by the witness and the order of detention there was almost similar. The Division Bench has also placed reliance upon the decision of the Hon'ble Supreme Court in the case of Pradeep Nilkanth Paturkar V/s. S. Ramamurthi & ors., reported in (JT (1992) 3 SC 261) A.I.R. 1994 SC 656 for upholding the ground of

delay and cutting short the continued detention. In P.N.Paturkar's case reference was made to an earlier decision of the Apex Court in the case of A.T.Abdul Rahman V/s. State of Kerala (1989) 4 SCC 741 : AIR 1990 SC 225. Following observations have been quoted :

"The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the detention order, the Court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the Court has to investigate whether the causal connection has been broken in the circumstances of each case."

In the case before the Supreme Court there was a delay of 5 months and 8 days from the date of registration of the last case and of more than 4 months from the submission of the proposal. The statements were obtained only after detenu became successful in getting bail in all the cases registered against him. In so far as the present case is concerned, the facts as noted above speak for themselves. The result is that the decision in P.N.Paturkar's case (supra) would be applicable to the facts of the present case.

5. The result is that the decision in P.N.Paturkar's (supra) as applied by the Division Bench in S.C.A. No. 1060 of 1993 would be applicable to the facts of the present case. In the facts and circumstances of the present case, therefore, the ground of delay for snapping continued detention of the petitioner has clearly been established.

6. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed directly on

the strength of decision of P.N.Paturkar (supra), it is not necessary to deal with the other grounds. Hence, following order is passed :

The impugned order of detention is hereby quashed and set aside. The petitioner - detenu - Darbar Bhikhubha Hanubha Chudasama shall be forthwith set at liberty if he is not required to be detained in any other case. Rule made absolute accordingly.

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